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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,667	07/25/2002	Horst Wagner	10191/2352	8936

26646 7590 07/21/2003

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EXAMINER
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STEVENS, MAURICE E

ART UNIT	PAPER NUMBER
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2855

DATE MAILED: 07/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/089,667

Applicant(s)

WAGNER ET AL.

Examiner

Maurice Stevens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 8-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Machida et al.

In regards to claim 8 and 14, Machida et al discloses a method of controlling an engine, comprising the steps of: determining on the first basis of a first variable which characterizes an injection quantity (fig.2, {6} and column 6, lines 17-20) and a second variable which characterizes an angular position at which the injection quantity is metered (fig 2, {21+22 crankshaft sensors}), a third variable which characterizes a torque supplied by the engine (column 1, lines 52-56 and 66-67), a device for controlling an engine comprising an arrangement for determining on the basis of a first variable

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which characterizes an injection quantity (fig.2, {6} and column 6, lines 17-20) and a second variable which characterizes an angular position at which the injection quantity is metered (fig 2, {21+22 crankshaft sensors}), a third variable which characterizes a torque supplied by the engine (column 1, lines 52-56 and 66-67), determining on the basis of a fourth variable which characterizes an intent of a driver (column 2, line 8), a fifth variable which characterizes a torque desired by the driver (fig 4 {S11} and column 1, lines 52-55), an arrangement for determining on the basis of a fourth variable which characterizes an intent of a driver (column 2, line 8) , a fifth variable which characterizes a torque desired by the driver (fig 4 {S11} and column 1, lines 52-55), and analyzing the third variable and the fifth variable for the purpose of fault monitoring (column 1, lines 52-63 and column 2, lines 1-19 and fig 4).

In regards to claim 9, Machida et al discloses wherein the first variable corresponds to an actuation duration of the output stage of one of a solenoid valve and a piezoactuator (column 6, lines 17-20).

In regards to claim 10, Machida et al discloses wherein the angular position is that of a crankshaft and the second variable corresponds to the angular position of the crankshaft at which injection occurs (fig 2, {21+22}).

In regards to claim 11, Machida et al discloses wherein the fourth variable corresponds to a position of an operating element (col 2, lines 8).

In regards to claim 12, Machida et al discloses further comprising the steps of detecting a fault when the third variable and the fifth variable differ by more than a threshold value (column 1, lines 64-67 and column 2, lines 1-5).

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In regards to claim 13, Machida et al discloses wherein the fault monitoring takes place only in certain operating states (fig 4, fig 8 and column6, lines 48-56 {the process can takes place at all the time except when the engine is in a lean state}).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maurice Stevens whose telephone number is (703) 306-5895. The examiner can normally be reached on M-F, 6:00am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (703) 305-4816. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7382 for regular communications and (703) 308-7382 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

MS/2855  
July 10, 2003

  
EDWARD LEFKOWITZ  
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